IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO 716 of 1995
with
CIVIL APPLICATION NO 2250 of 1995
in
SPECIAL CIVIL APPLICATION NO 448 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

GOVT OF INDIA

Appearance:

1. LETTERS PATENT APPEAL No. 716 of 1995
MR ASHISH P. BHATT, A.G.P. for Appellant No.
SERVED BY RPAD - (R) for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 24/06/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. The present respondent No.2 - Dhirajlal Harikisandas Sikligar, original petitioner, had filed Special Civil Application No.448 of 1995 before this Court claiming writ of mandamus to be issued against the respondents - Union of India and State of Gujarat respectively for paying him Svatantra Senani Sanman Pension to him under the scheme of 1980, with an exemplary cost of Rs.25,000/- for the delay in awarding pension under the said Scheme.

2. The above Writ Petition, filed by the present respondent No.2 - original petitioner, came to be allowed by the learned Single Judge of this Court (S.K.Keshote,J.) by his Judgment and order dated 15.7.1995 with a direction to the respondent No.2 - State of Gujarat (present Appellant) to send the two Certificates of the petitioner regarding imprisonment and caste after making necessary verification or report regarding genuineness, correctness, etc. to the respondent No.1 so as to reach to the office of respondent No.1 - Union of India on or before 1.9.1995. The original respondents were also directed to pay to the petitioner a sum of Rs.5,000/- by way of cost of the petition in the equal proportion by way of Demand Draft. The respondents were further directed to deposit Rs.2500/- each in the office of the Gujarat High Court Legal Aid Committee. Simultaneously, the learned Single Judge directed the Secretary, Ministry of Home Affairs (Freedom Fighters' Division), Government of India, to hold an inquiry in the matter and to recover cost from the concerned persons, who was responsible for delay. Compliance was ordered to be placed before His Lordships on or before 14.10.1995. Part of the order, passed against the State of Gujarat - original respondent No.2, has been challenged in this Appeal by the Appellant - State of Gujarat.

3. Civil Application No.2250 of 1995 is filed in this Appeal wherein Rule was ordered to be issued to the other side with ad.interim relief granted in terms of Para : 5(A), which reads as under :

(A) Stay the implementation of the Judgment and order passed by the learned Single Judge (Coram : S.K.Keshote, J.) dated 15.7.1995 in Special Civil Application No.448 of 1995 pending the admission,

hearing and final disposal of this Letters Patent Appeal.

4. Thus, the aforesaid Judgment and order passed by the learned Single Judge came to be stayed by the Division Bench of this Court which is in operation till today.

5. It may be stated that both the present respondents, respondent No.1 - Government of India and respondent No.2 - Dhirajlal Harkisandas Sikligar (original petitioner) are duly served with the Notice of rule, issued in this matter, but so far no one appears for them.

6. From the memo of Appeal, filed by the Appellant State of Gujarat, it appears that it is more or less aggrieved of the cost awarded by the learned Single Judge and the direction to hold an inquiry and recover the amount of cost from the concerned person from his or her salary.

7. Having heard the learned AGP Shri Bhatt for the Appellant - State of Gujarat, we are of the considered opinion that the direction issued by the learned Single Judge to the Appellant - State of Gujarat - original respondent NO.2 to send two Certificates of the petitioner regarding imprisonment and caste after making necessary verification or report regarding genuineness, correctness, etc. to the respondent No.2 - Union of India is not required to be disturbed. The Union of India was directed to consider the case of the petitioner. If the petitioner found eligible then he would be entitled for the same. However, awarding cost of Rs.5000/-, which was to be paid in equal proportion by both the original respondents - Union of India and the State Government, was, in our considered opinion not called for. Hence, that part of the order passed by the learned Single Judge is hereby quashed and set aside.

8. Similarly, the order passed by the learned Single Judge, directing both the respondents - Union of India and the State of Gujarat to deposit sum of Rs.2500/- in the office of the Gujarat High Court Legal Aid Committee was also not necessary and called for. Hence, the same is hereby quashed and set aside.

9. In view of the above discussion, this Appeal is allowed to the aforesaid extent only with no order as to costs.

Civil Application No.2250 of 1995 is disposed of as the main LPA is disposed of. Ad.interim relief granted earlier stands vacated. Rule discharged. No order as to costs.

(B.J.Shethna, J.)

Date : June 24, 2004

(M. C. Patel, J.)

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